STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner **File No. 100155-001**

v

Blue Cross Blue Shield of Michigan
Respondent
_____/

Issued and entered
this 30th day of December 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On September 15, 2008, XXXXX, authorized representative of XXXXX (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Commissioner reviewed the material submitted and accepted the request on September 22, 2008.

Because it involved medical issues, the Commissioner assigned the case to an independent review organization (IRO) which provided its analysis and recommendations to the Commissioner on October 6, 2008. The Petitioner provided additional material to the Commissioner on October 3, 2008, but this was after the seven day time limit for providing additional material. Therefore, this information was not forwarded to the IRO.

II
FACTUAL BACKGROUND

The Petitioner, born on January 15, 1994, receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) under its *Community Blue Group Benefits Certificate*. She has

been diagnosed with type 1 diabetes. BCBSM approved the use of a continuous glucose monitoring system (CGMS) for one year from March 29, 2007, until March 28, 2008. BCBSM denied coverage for the CGMS after March 29, 2008.

The Petitioner appealed the denial through BCBSM's internal grievance process. After a managerial-level conference on July 10, 2008, BCBSM did not change its decision and issued a final adverse determination on July 15, 2008.

III
ISSUE

Did BCBSM properly deny coverage for the Petitioner's continued use of a CGMS and related supplies after March 29, 2008?

IV
ANALYSIS

Petitioner's Argument

The Petitioner is currently using a Dexcom CGMS to prevent hypoglycemic episodes and allow her to adjust insulin levels to prevent hypoglycemic complications. She is requesting coverage for monthly supplies for the Dexcom glucose monitor.

BCBSM covered the monitor and supplies until March 2008 but is denying them now because it says there is no documentation of hypoglycemia. According to the Petitioner, her tests do not indicate hypoglycemia because the Dexcom device has aided in preventing severe hypoglycemia.

The Petitioner believes that it is clear that her continuous glucose monitor and related supplies are medically necessary to control her hypoglycemia and should be covered under her certificate. She argues that BCBSM is required to cover this care.

BCBSM's Argument

The certificate does not have provisions specifically governing a CGMS. Because of this, BCBSM submitted the Petitioner's medical records to its medical staff for review and determination.

As a result of that review, BCBSM paid for the Petitioner's CGMS and supplies for one year (up to March 28, 2008). Now BCBSM says the medical records did not indicate that there is a significant hypoglycemia unawareness combined with unresponsiveness that would warrant a CGMS. This criterion was present when BCBSM first approved the CGMS.

BCBSM's medical staff based its denial of the preauthorization request from the BCBSM medical policy entitled "Continuous Monitoring Glucose in Interstitial Fluid." This policy states:

> The use of invasive continuous glucose monitoring in interstitial fluid may be considered *medically appropriate* in patients who are self-monitoring blood glucose at least four times daily by fingerstick **and** when **one or more** of the following criteria are met.
> - HbA1c is 8 or greater.
> - Unexplained large fluctuations in daily pre-prandial glucose values.
> - Unexplained frequent hypoglycemia episodes.
> - Pregnant and diabetic or planning to conceive.
> - Patients starting insulin pump therapy.
> - Episodes of ketoacidosis or hospitalization for glucose levels out of control.

BCBSM's medical consultants said that none of the above criteria was found in the medical records submitted by the Petitioner. Therefore, BCBSM concluded the CGMS was not a covered benefit.

Commissioner's Review

The Petitioner's certificate sets forth the benefits that are covered. In *Section 5: Coverage for Other Health Care Services,* under "Outpatient Diabetes Management Program," the certificate says:

> We pay up to the approved amount for selected services and medical supplies to treat and control diabetes when determined to be medically necessary and prescribed by an MD or DO. * * *
>
> Diabetes services and medical supplies include:
>
> - Blood glucose monitors

The question of whether the Petitioner's CGMS and related supplies were medically necessary was presented to an independent review organization (IRO) for analysis as required by

Section 11(6) of the Patient's Right to Independent Review Act. The IRO physician reviewer is board certified by the American Board of Internal Medicine; certified in endocrinology and metabolism; a member of the Endocrine Society, the American Society of Bone and Mineral Research, the American Federation of Clinical Research, and the American Association for the Advancement of Science; is published in peer reviewed medical literature; and is in active practice.

The IRO reviewer indicated that:

> [V]ery compliant diabetics have been able to minimize hypoglycemia by observing downward trends on the visual readouts… of their continuous monitors and to take appropriate dietary measures to reverse the trend. This is the case with [the Petitioner]. It is apparent in the letter from the enrollee's mother that assiduous attempts are made to control the [Petitioner's] blood sugar and still allow her to lead an active teenager's life. The logs from the CGMS show that the blood sugar is very well controlled for a type I diabetic with peaks and nadirs that are abnormal but within an acceptable range. This could probably not be accomplished and sustained without the use of the CGMS. The result of the CGMS is that the [Petitioner] no longer has episodes of hypoglycemia unawareness combined with unresponsiveness. It would not be reasonable to deny use of the CGMS and make the [Petitioner] demonstrate life threatening hypoglycemia in order to justify reinstating it. Thus, in this individual case the reviewer believes the CGMS is medically necessary.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16) (b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in the present case.

The Commissioner accepts the recommendation of the IRO and finds that the Petitioner's CGMS is medically necessary for treatment of his condition and therefore is a covered benefit under the certificate.

V
ORDER

Respondent BCBSM's July 15, 2008, final adverse determination is reversed. BCBSM is required to cover the Petitioner's CGMS, including related supplies, after March 28, 2008. BCBSM shall provide coverage within 60 days and provide proof of coverage to the Commissioner within seven days after coverage is provided.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.